

1 **MIKE WINSOR**

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9 *Attorney for the State of Montana*

10 MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

11 THE STATE OF MONTANA,

12 Plaintiff,

13 v.

14 CYNTHIA MAE HENDERSON,

15 Defendant.

Case No. ADC-2012-122

**AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO FILE INFORMATION**

16 STATE OF MONTANA)
17 :ss.
18 County of Lewis and Clark)

19 After being duly sworn the undersigned deposes and states:

20 1. I am a Special Assistant Attorney General by virtue of my employment with the Office of
21 the Commissioner of Securities and Insurance, Montana State Auditor (CSI). I am also a duly
22 appointed, qualified, and acting Special Deputy Lewis and Clark County Attorney for the purpose of
23 prosecuting this case. I am familiar with the investigation relating to CYNTHIA MAE HENDERSON
24 (Defendant).

25 2. I request that the Court determine probable cause exists to allow the State to file an
26 Information alleging the Defendant committed an offense in Lewis and Clark, Jefferson, Hill, and
27 Yellowstone Counties, Montana, based upon information set forth herein that was developed during an
28 investigation conducted by the CSI's criminal justice investigator. More specifically, the Information

1 alleges the Defendant committed the following offense: COUNT I: INSURANCE FRAUD/THEFT, a
2 FELONY, in violation of Mont. Code Ann. §§ 33-1-1202(1)-(2) and 45-6-301(6)(a).

3 3. Venue is proper in Lewis and Clark County pursuant to Mont. Code Ann. §§ 46-3-112(2) and
4 46-3-115 because acts that form the basis of the charge against the Defendant occurred or continued in
5 more than one county, all of them having a nexus to Lewis and Clark County. *See e.g. State v. Cooney*,
6 271 Mont. 42, 894 P.2d 303 (1995).

8 4. A criminal justice investigator has made a full and careful investigation of the facts and
9 circumstances surrounding the commission of the offense, so far as they are known or ascertainable, and
10 your Affiant believes it a proper case for the filing of the Information that accompanies this affidavit.
11

12 5. The facts establishing probable case are as follows:

13 In 2005, Defendant vacated her residence located at 1239 Montana Highway 282, in Clancy,
14 Montana, and left the state leaving personal property in the residence. Defendant's residence was
15 insured by a Special Form Homeowner's Policy (Policy) issued by Fire Insurance Exchange (FIE). FIE
16 is a member company of Farmers Insurance Group of Companies. It does not appear, at any time
17 subsequent to 2005, that Defendant occupied the dwelling or otherwise maintained it as a residence. At
18 all times material hereto, all contact between the Defendant and FIE was through telephone or cell
19 phone, fax, and mail. At all times material hereto, the Defendant purported to be out of the state of
20 Montana.
21

23 On May 1, 2007, the Defendant called FIE to initiate a claim for alleged break-ins and
24 thefts of personal property from her home on two separate occasions. On both occasions the alleged
25 thefts were discovered by Defendant's relatives. The first occasion purportedly occurred at some time
26 prior to its alleged discovery on October 21, 2006, and the second occasion was purported to have
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1 occurred at some time prior to its alleged discovery on April 23, 2007. The Defendant reported to FIE
2 that several items of personal property had been taken from the home.

3 The first alleged theft was reported to the Jefferson County Sherriff's Department by an associate
4 of the Defendant. A Jefferson County Sheriff deputy investigated the 2006 occurrence and generated an
5 incident report, but no sheriff report was generated because the deputy could not establish that a theft
6 occurred. The second alleged occurrence was never reported to the Sheriff at the time of discovery, no
7 report was generated, and FIE did not pay out on the second claim for those reasons.

8
9 On May 2, 2007, the claims were assigned to Gary Rankin (Rankin), an adjuster for FIE, who
10 works out of Helena, Lewis and Clark County, Montana. Rankin was the Defendant's primary contact
11 with FIE. On the same date, Rankin took a statement from the Defendant over her cell phone.

12
13 On May 3, 2007, Rankin conducted a field inspection of the Defendant's property. On May 4,
14 2007, Rankin requested the Defendant to provide him with copies of the sheriff reports, and names and
15 addresses of the Defendant's relatives that she had mentioned in her statement to Rankin the previous
16 day. On August 13, 2007, Defendant faxed completed Proof of Loss forms and contents worksheets to
17 FIE. This fax did not include the names and addresses of the relatives that the Defendant had mentioned
18 previously, nor did it include the sheriff reports as requested.

19
20 On August 17, 2007, in a telephone conversation with the Defendant, Rankin, again, asked
21 the Defendant to provide sheriff reports and names and addresses of the Defendant's relatives. On
22 September 27, 2007, in a telephone conversation with the Defendant, Rankin questioned the Defendant's
23 claimed losses, requested documentation and proof of claimed losses, and requested to re-inspect the
24 house. Defendant promised to provide documentation and stated that she no longer owned the house but
25 had lost it in foreclosure. On the same date, Rankin contacted the FIE Special Investigative Unit (SIU).

26
27 On October 16, 2007, the SIU noted that the following issues relating to the Defendant's
28

1 claims warranted further investigation: (1) delayed reporting; (2) two separate theft losses; (3) the
2 Defendant had not lived in the residence since February of 2005; (4) possible financial distress
3 (Defendant lost her business, and lost the residence due to foreclosure); and (5) the police were not
4 contacted on the second theft. Additionally, FIE decided to do an examination of the Defendant under
5 oath.
6

7 The claim was delayed for several months due to the Defendant's failure to provide
8 supporting documentation requested by FIE including sheriff reports, photographs, and witness
9 statements. The claim was also delayed twice by the Defendant rescheduling her examination under
10 oath. Eventually, FIE requested the incident report from the alleged 2006 theft from the Jefferson
11 County Sheriff's Department which FIE obtained on June 26, 2008.
12

13 The Policy provided for replacement cost settlement on certain property relating to Defendant's
14 theft claim. However, the policy also provided that until the Defendant repaired or replaced the
15 damaged or stolen property, the loss would be paid at its Actual Cash Value, subject to coverage limits
16 and the policy deductible. Actual Cash Value is represented by the total estimate for damages, which, in
17 this case, was \$47,684.78, less recoverable depreciation in the amount of \$23,422.72, less amount over
18 limits in the amount of \$1,829.82, *to wit*: \$22,432.24.
19

20 On July 21, 2008, under a reservation of rights under the terms, conditions, or provisions of the
21 policy, FIE paid the Defendant \$170.00 for alleged property damage to the dwelling. Additionally, on
22 August 26, 2008, under a reservation of rights under the terms, conditions, or provisions of the Policy,
23 FIE paid the Defendant \$22,432.24, representing an Actual Cash Value payment for the alleged loss due
24 to theft pursuant to the Policy. One of the rights reserved by FIE under the Policy was a provision that
25 voided the entire policy in the event that the Defendant knowingly and willfully concealed or
26 misrepresented any material fact or circumstance relating to the insurance before or after the loss.
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1 Under the Policy, the Defendant could replace any of the allegedly stolen items and make an
2 additional claim for the replacement cost of the items. Under the Policy, the Defendant was entitled to
3 recover the amount of the withheld depreciation or the cost incurred, whichever was less. FIE set a one-
4 year deadline for making a supplemental claim for replacement or recoverable depreciation of the items
5 of personal property which were alleged to have been stolen.
6

7 On June 26, 2009, the Defendant submitted a supplemental claim for items of personal
8 property she had allegedly replaced. Defendant supplied several receipts for the allegedly replaced
9 personal property. Rankin submitted the matter to FIE's SIU because it appeared to him that the
10 receipts were fraudulent. FIE's SIU agreed that the receipts appeared fraudulent and submitted the
11 matter to the National Insurance Crime Bureau (NICB). The NICB, in turn, submitted a fraud referral to
12 the CSI.
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14 The CSI's investigation concluded that receipts in support of Defendant's supplemental claim
15 were fabricated for several reasons including, but not limited to, the following: (1) eleven of the thirteen
16 receipts appeared to have been produced by the Defendant in standard Word format; (2) only two of the
17 receipts appeared to be from recognized retailers; (3) several of the businesses did not exist at the
18 addresses that were given; and (4) two of the Montana individuals who allegedly sold items to the
19 Defendant provided sworn affidavits that they did not provide the receipts submitted by Defendant to
20 FIE or sell the items to the Defendant. The value of the Defendant's supplemental claim was
21 \$23,102.72.
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24 Based on the foregoing, the undersigned requests the Court find that probable cause exists and
25 allow the State to prosecute the Defendant in the manner provided by law.
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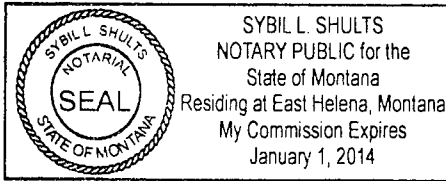
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1 DATED this 2nd day of May, 2012.
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4 *Winsor*
5 AFFIANT
6

7 SUBSCRIBED and SWORN to before me by Mike Winsor this 2nd day of May, 2012.
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Sybil L. Shults